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if a city ordinance requires a fireman to be stationed at a theatre, it has been properly held that the owner could not be required to pay the expense;⁵ but the opposite decision has also been reached.⁶

A somewhat similar question is raised by an ordinance requiring an abutting owner to clear snow off his sidewalk at his own expense. This ordinance has been held valid,⁷ but the better view appears to be that the ordinance is unreasonable, since it requires a single class of abutting owners to pay for a purely public benefit.⁸

If, however, a landowner desires and asks for special protection, not required for the public interest, it is common practice, and it would seem theoretically sound to require payment.

A recent English case, *Grays Urban District Council v. Grays Chemical Works, Limited*,⁹ seems to be decided upon this correct distinction. The defendant was owner of an acid plant, of which the roof had caved in; there was danger that the premises would catch fire from acid flowing out of broken carboys. He accordingly called the fire department of plaintiff District Council, and the department remained until the immediate danger of fire was over. He then asked that firemen be supplied to watch the premises during the removal of the debris, and four firemen remained for several days. Plaintiff having sued for compensation for services of the firemen on the first day, and also for the services of the four left to watch the premises, it was held that the defendant could not be called upon to pay for the services of the department, but that he must pay for the time of the four men who were left to watch the debris.

MISTAKE OF LAW IN EQUITY AND AT LAW.—American courts in their latest decisions have clearly displayed the tendency to confine the mistake of law doctrine within even narrower limits than heretofore. They still sternly declare that *ignorantia legis non excusat*, but we find them nevertheless granting relief in the particular cases under the guise of some exception to the rule. With respect to reformation of instruments the greatest liberality has been evidenced, while with cases involving recovery of money paid under mistake, occurring as they do, chiefly at law, the rule has been relaxed to a less degree. In many cases where relief for a mistake of law has been refused, the court would have reached a like result even if the mistake had been one of fact.¹ On the other hand, some jurisdictions have refused to subscribe to the progressive tendency and have of late applied the doctrine in all its rigor.²

⁵ *Chicago v. Weber*, 246 Ill. 304, 92 N. E. 859.

⁶ *Tannenbaum v. Rehm*, 152 Ala. 494, 44 So. 532.

⁷ *Goddard, Petitioner*, 16 Pick. (Mass.) 504.

⁸ *Gridley v. Bloomington*, 88 Ill. 554.

⁹ [1918] 2 K. B. 461.

¹ See *Jacobson v. Mohall Telephone Co.*, 34 N. D. 213, 157 N. W. 1033; *Traweek v. Hagler*, 75 So. 152 (Ala.); *Porter v. Wright*, 145 Ga. 787, 89 S. E. 838; *Johnson v. Hernig*, 53 Pa. Sup. Ct. 179; *Diebel v. Diebel*, 116 Minn. 168, 133 N. W. 463; *Houlehan v. Inhabitants of Kennebec County*, 108 Me. 397, 81 Atl. 449.

² *Tilton v. Fairmont Lodge*, 244 Ill. 617, 91 N. E. 644; *Baker v. Pierce*, 197 Ill. App. 158; *Shields v. Hitchman*, 251 Pa. 455, 96 Atl. 1039; *Clark v. Lehigh Coal Co.*,

The law on the subject, despite the increasingly liberal view taken by the majority of courts, is in a very unsatisfactory state. The rule is declared to exist in full force, yet so many arbitrary exceptions have been grafted on it that, in fact, nothing remains thereof. Thus far, at least ten well-defined exceptions have been established. (1) A mistake of foreign law has been dealt with practically everywhere, as a mistake of fact;³ and so, with a foreigner mistaking the law of the forum.⁴ (2) Public moneys erroneously disbursed are recoverable;⁵ (3) money paid to trustees or court officers under mistake may not be retained;⁶ and (4) payments made under a void statute⁷ or on reliance of a decision later overruled⁸ must, in some jurisdictions, be returned. (5) Where a court officer in administering a fund makes erroneous payments as between the beneficiaries, the court will allow a set-off against future claims or will order repayment, as the case may require.⁹ (6) The courts have everywhere laid hold of an accompanying mistake of fact and have accorded the adequate remedy;¹⁰ (7) and likewise with an equity present in the case, such as fraud,¹¹ superior knowledge of a party,¹² or a fiduciary relationship.¹³ (8) A mistake as to legal title or another antecedent right is a well-established exception in England and one growing in favor in this country.¹⁴ (9) Where the parties in reducing an oral agreement to writing have failed to express the intent of all concerned through the technical use of language or otherwise, the courts have almost universally granted reformation,¹⁵ though it is difficult to perceive why a

²⁵⁰ Pa. 304, 95 Atl. 462; Penn. Stave Co.'s Appeal, ²²⁵ Pa. 178, 73 Atl. 1107; Godwin *v.* Da Conturbia, ¹¹⁵ Md. 488, 80 Atl. 1016; Euler *v.* Schroeder, ¹¹² Md. 155, 76 Atl. 164.

But in Connecticut and Kentucky the distinction between a mistake of law and one of fact is disregarded both in equity and at law. *Bronson v. Liebold*, ⁸⁷ Conn. 293, 87 Atl. 979; *Park Bros. v. Blodgett and Clapp Co.*, ⁶⁴ Conn. 28, 29 Atl. 133; *Supreme Council Catholic Knights v. Fenwick*, ¹⁶⁹ Ky. 269, 183 S. W. 906; *Blakemore v. Blakemore*, ¹⁹ Ky. L. Rep. 1619, 44 S. W. 96.

³ *Sampson v. Mudge*, ¹³ Fed. 260; *Rosenbaum v. U. S. Credit System Co.*, ⁶⁴ N. J. L. 34, 44 Atl. 966. By statute in California a mistake of foreign law is a mistake of fact. CAL. CIV. CODE, § 1579. Similarly in North Dakota, South Dakota, Montana, and Oklahoma.

⁴ *Osincup v. Henthorn*, ⁸⁹ Kan. 58, 130 Pac. 652.

⁵ *State v. Young*, ¹³⁴ Ia. 505, 110 N. W. 292; *Wisconsin & Central R. R. Co. v. United States*, ¹⁶⁴ U. S. 190. *Contra*, *People v. Foster*, ¹³³ Ill. 496, 23 N. E. 615.

⁶ *Ex parte James*, ¹ L. R. 9 Ch. 609; *Gillig v. Grant*, ²³ App. Div. (N. Y.) 596, 49 N. Y. Supp. 78.

⁷ *Spalding v. City of Lebanon*, ¹⁵⁶ Ky. 37, 160 S. W. 751. *Contra*, *Yates v. Royal Ins. Co.*, ²⁰⁰ Ill. 202, 65 N. E. 726.

⁸ *Centre School Township v. State*, ¹⁵⁰ Ind. 168, 49 N. E. 961. *Contra*, *Kenyon v. Welty*, ²⁰ Cal. 637.

⁹ *Finch v. Smith*, [1915] 2 Ch. 96; *In re Birkbeck, etc. Society*, [1915] 1 Ch. 91; *Hemphill v. Moody*, ⁶⁴ Ala. 468.

¹⁰ *Freeman v. Curtis*, ⁵¹ Me. 140; *Ray & Thornton v. Bank of Kentucky*, ³ B. Monroe (Ky.) 510.

¹¹ *Chelsea Nat. Bank v. Smith*, ⁷⁴ N. J. Eq. 275, 69 Atl. 533; *Tolley v. Poteet*, ⁶² W. Va. 231, 57 S. E. 811.

¹² *Moreland v. Atchison*, ¹⁹ Tex. 303; *Jordan v. Stevens*, ⁵¹ Me. 78.

¹³ *Tompkins v. Hollister*, ⁶⁰ Mich. 470, 27 N. W. 651.

¹⁴ *Cooper v. Phibbs*, ¹ L. R. 2 Eng. & Ir. App. 149; *Stoeckle v. Rosenheim*, ¹⁰ Del. Ch. 195, 87 Atl. 1006; *Burton v. Haden*, ¹⁰⁸ Va. 51, 60 S. E. 736; *McIntyre v. Casey*, ¹⁸² S. W. 966 (Mo.).

¹⁵ *Griswold v. Hazard*, ¹⁴¹ U. S. 260; *Gross Construction Co. v. Hales*, ³⁷ Okla. 131,

court of equity should distinguish such a case from one where the written contract represents the agreement of the parties and the error occurs as to its legal effect.¹⁶ (10) Two states have succeeded in drawing a metaphysical distinction between mistake and ignorance of law, allowing relief in the former case only.¹⁷ In all other cases — if any — the maxim remains intact.

The continued lack of frankness on the part of the courts, obvious from the presence of this formidable array of exceptions, makes it clear that relief from the confusion can hardly be expected from that source. Nor are attempts by writers to provide criteria for reconciling old cases and for granting relief in new ones of much value. Such criteria have in the past been attempted,¹⁸ and those which have not been wholly discarded have served only to establish additional exceptions and thus to increase further the confusion. In fact, no criterion is possible, much less, desirable. It can result only in an effort to save the last vestige of a decrepit doctrine unsupportable on principle, and unjust in its operation. Legislative action, abolishing the maxim and establishing a mistake of law on an equal footing with one of fact, seems to be the only solution. Yet relief even from that source is unlooked for, if the judiciary adopts the attitude recently taken toward such legislation in Oklahoma.¹⁹ There the court, by construing statutes less narrowly, could have given them the effect of banishing the maxim entirely from its operation in civil cases, where it properly has no application; but instead, the court stood strictly on precedent and practically negatived the true purpose of the legislation.²⁰ However, statutes more clearly defined in terms and scope than those thus far passed²¹ would make the recurrence of such judicial obstruction impossible.

RECENT CASES

ADMIRALTY — PRACTICE — SUIT AGAINST NONRESIDENT ENEMY ALIEN. — A British company sued an Austrian corporation *in personam* in a United States admiralty court after England declared war on Austria. The defendant appeared and gave a bond releasing an attachment placed on one of its ships; but the District Court dismissed the libel, and by the time the case reached the Supreme Court, the United States also had declared war on Austria, and had prohibited all intercourse with Austrian subjects. The supervening

¹⁶ 129 Pac. 28; *Good Milking Machine Co. v. Galloway*, 168 Ia. 550, 150 N. W. 710; *Philippine Sugar, etc. Co. v. Philippine Islands*, 247 U. S. 385.

¹⁷ See 1 STORY, *EQUITY JURISPRUDENCE*, 13 ed., 113, note.

¹⁸ *Culbreath v. Culbreath*, 7 Ga. 64; *Lawrence v. Beaubien*, 2 Bailey (S. C.), 623.

¹⁸ See *Cooper v. Phibbs*, *supra*; KERR, *FRAUD AND MISTAKE*, 3 ed., 431; STORY, *EQUITY JURISPRUDENCE*, 13 ed., § 121, 1 L. QUART. REV. 298; 17 CENT. L. JOUR. 12; 18 CENT. L. JOUR. 7; 2 POMEROY, *EQUITY*, 3 ed., § 849; 5 COL. L. REV. 366.

¹⁹ *Campbell v. Newman*, 51 Okla. 121, 151 Pac. 602.

²⁰ But see *Gregory v. Clabrough's Executors*, 129 Cal. 475, 62 Pac. 72. The statutes in California and Oklahoma are the same, but the California court construed them as including recovery for money paid by mistake as well as reformation of contracts.

²¹ See CAL. CIVIL CODE, § 1578; N. DAK. CIV. CODE, 1913, § 5855; SO. DAK. CIV. CODE, § 1207; OKLA. REV. LAWS, 1910, § 909; MONT. REV. CODE, 1907, § 4984.